

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE RECOMMENDED DECISION
OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee
bergmann@occ.state.oh.us
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

September 21, 2004

TABLE OF CONTENTS

SUMMARY	I
I. INTRODUCTION.....	1
II. THE FEDERAL HIGH-COST PROGRAM SHOULD SUPPORT ONLY A SINGLE LINE PER CUSTOMER.	4
A. RESTRICTING SUPPORT TO PRIMARY LINES IS CONSISTENT WITH THE TELECOMMUNICATIONS ACT OF 1996 AND CONGRESSIONAL INTENT.	6
B. RESTRICTING FEDERAL SUPPORT TO PRIMARY LINES WILL NOT HARM CONSUMERS OR CARRIERS IN RURAL AREAS.	13
C. PARTIES ADVOCATING CONTINUED SUPPORT FOR MULTIPLE CONNECTIONS HAVE FAILED TO ADDRESS THE COST DIFFERENCE BETWEEN PROVIDING PRIMARY AND ADDITIONAL LINES.	17
D. THE USF IS NOT INTENDED TO BE A COST-RECOVERY OR REVENUE GUARANTEE MECHANISM.	17
E. LIMITING SUPPORT TO A SINGLE LINE PER CUSTOMER IS COMPETITIVELY NEUTRAL.....	19
F. REASONABLE METHODS SHOULD BE ADOPTED TO ALLOW CONSUMERS TO DESIGNATE THEIR PRIMARY LINE.	21
G. SUPPORTING ONLY A SINGLE LINE PER CUSTOMER IS ESSENTIAL FOR THE FUTURE OF UNIVERSAL SERVICE SUPPORT IN TELECOMMUNICATIONS.	30
H. THE COMMISSION SHOULD ADOPT TRANSITIONAL MEASURES FOR RURAL CARRIERS TO MITIGATE THE IMPACT OF THE SHIFT TO SUPPORTING ONLY A SINGLE LINE PER CUSTOMER.....	31
III. ETC DESIGNATION ISSUES	33
A. THE COMMISSION SHOULD RAISE THE BAR FOR RECEIPT OF HIGH-COST FUNDS..	34
B. THE COMMISSION SHOULD ADOPT MANDATORY MINIMUM GUIDELINES FOR STATE COMMISSIONS TO CONSIDER WHEN DESIGNATING ETCs.....	35
C. THE COMMISSION AND THE STATES CAN ADD CONDITIONS TO THE RECEIPT OF UNIVERSAL SERVICE SUPPORT.	36
D. THE STANDARDS ADOPTED HERE SHOULD APPLY TO ETCs THAT HAVE ALREADY BEEN DESIGNATED.	38

E.	THERE SHOULD BE A HIGHER PUBLIC INTEREST STANDARD IN AREAS SERVED BY RURAL CARRIERS.	40
F.	THE ANNUAL ETC DESIGNATION PROCESS SHOULD BE USED TO ENSURE THAT FEDERAL SUPPORT IS USED FOR THE PURPOSES REQUIRED BY § 254.....	42
IV.	THE CHANGES ADDRESSED HERE SHOULD NOT BE CONTINGENT ON OTHER CHANGES TO THE UNIVERSAL SERVICE PROGRAMS. THE COMMISSION NEED NOT ADDRESS “SOURCE OF SUPPORT” ISSUES IN THIS PORTION OF THIS PROCEEDING.	44
V.	CONCLUSION	45

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE RECOMMENDED DECISION
OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

SUMMARY

In these reply comments, the National Association of State Utility Consumer Advocates (“NASUCA”) responds to the initial comments of other parties, focusing on those parties that oppose limiting federal high-cost support to a single line per customer, and thereby seek continuation of the current mechanism that supports multiple lines from multiple carriers for each customer. These commenters -- a majority -- tend to have a financial or other stake in maximizing carrier support. NASUCA also responds to parties that oppose adding public interest criteria for the designation of eligible telecommunications carriers. These commenters -- a minority -- tend to be competitive ETCs that would like there to be minimal requirements for ETC status.

With regard to supporting only a primary line per customer, NASUCA shows that the commenters who seek support for entire networks, for advanced services, or for second line service, ignore the statutory provision that only the services on the list determined by the Federal Communications Commission are supposed to be supported.

Neither entire networks, advanced services nor second line service are currently on that list.

Other commenters view the high cost fund as a revenue guarantee mechanism. The *Alenco* case, which said that universal service funds are to support customers, not carriers, provides a stark rebuttal. Other commenters, on the other hand, view the high cost fund as a means to promote competition. “Promotion of competition” is also not one of the statutory purposes of high cost funding.

Commenters raise the specter of unaffordable second and third line rates. The rates for multiple lines will be set by state commissions, who will recognize that the incremental cost of additional lines does not necessarily require an increase if support is withdrawn.

Restricting support to a single line per customer is a key means, although not the only means, to controlling the growth in the universal service fund. Commenters note the relatively small portion of funding currently consumed by competitive ETCs, especially wireless ETCs, but overlook the dramatic increases in such support and the potential \$2 billion increase if all wireless carriers seek and obtain ETC status.

NASUCA responds in detail to the many practical questions raised by commenters concerning the administration of a restriction of support to primary lines. The most feasible method appears to be to limit support to a single line per customer, as the best yet least intrusive proxy to limiting support to a single line per “household.”

On the subject of ETC designation, NASUCA notes some commenters’ interest in obtaining high cost funding with a minimum of effort, but argues that such ease is not consistent with the public interest. NASUCA also refutes some commenters’ arguments

that the Commission lacks power to add additional conditions to ETC designations or to cut off support to a previously-certified carrier that does not meet the additional public interest conditions determined by the Commission.

Finally, NASUCA notes the many changes recommended by commenters that are extraneous to the purpose of this phase of this proceeding. Most of those changes are already under consideration by the Commission in this and other dockets.

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE RECOMMENDED DECISION
OF THE FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE**

I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ replies here to comments submitted to the Federal Communications Commission (“Commission”) on issues raised by the February 27, 2004 Recommended Decision (“RD”) of the Federal-State Joint Board on Universal Service (“Joint Board”).² As in

¹ NASUCA is a voluntary national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² See *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004) (“*NPRM*”), seeking comment on the Joint Board RD, FCC 04J-1 (rel. February 27, 2004). Comments were filed by the Alaska Telephone Association (“ATA”); ALLTEL Corporation (“ALLTEL”); AT&T Corp. (“AT&T”); AT&T Wireless Services, Inc. (“AWS”); Beacon Telecommunications Advisors, LLC (“Beacon”); BellSouth Corporation (“BellSouth”); CC Communications (“CCC”); Centennial Communications Corp. (“Centennial”); CenturyTel, Inc. (“CenturyTel”); Coalition of State Telecommunications Associations and Rural Telephone Companies (“CSTA/RCA”); Commnet Wireless, LLC (“Commnet”); Cox Communications, Inc. (“Cox”); Dobson Cellular Systems, Inc. (“Dobson”); Fred Williamson and Associates, Inc. (“FWA”); General Communication, Inc. (“GCI”); GVNW Consulting, Inc. (“GVNW”); Hopi Telecommunications, Inc. (“Hopi”); Independent Telephone & Telecommunications Alliance (“ITTA”); Iowa Utilities Board

NASUCA's initial comments, these reply comments first address -- and support -- the Joint Board's recommendation that federal high cost support be limited to a single connection to the network for each customer. The reply comments also address -- and support -- the Joint Board's recommendation to strengthen the eligible telecommunications carrier ("ETC") designation process required by 47 U.S.C. § 214(e)(2).

In their comments, many of the stakeholders address issues that are beyond the ambit of the RD. Admittedly, the many piece parts of universal service policy are interrelated, intertwined, and interdependent. However, as explained in the final section of these reply comments, most of the issues raised in such comments can and should be addressed separately, and, indeed, are already being addressed by the Commission. If the Commission must wait on order to make some improvement to the universal service support system until it can make all possible improvements, nothing will ever change.

("IUB"); John Staurulakis, Inc. ("JSI"); Midsized-Carrier Coalition ("MSCC"); Montana Independent Telecommunications Systems ("MITS"); National Telecommunications Cooperative Association ("NTCA"); National Tribal Telecommunications Association ("NTTA"); Nebraska Rural Independent Companies ("NRIC"); New York State Department of Public Service ("NYDPS"); Nextel Communications, Inc. ("Nextel"); Nextel Partners, Inc. ("Nextel Partners"); Oregon-Idaho Utilities and Humboldt Telephone Company ("OIU/HTC"); Organization for the Promotion and Advancement of Small Telephone Companies ("OPASTCO"), the Rural Independent Competitive Alliance and the Rural Telecommunications Group, Inc. (collectively, the "Rural Telecommunications Association," or "RTA"); the People of the State of California and the Public Utilities Commission of the State of California ("California"); Public Service Commission of the State of Missouri ("MoPSC"); Public Utility Commission of Oregon ("OrPUC"); Puerto Rico Telephone Company ("PRTC"); Qwest Communications International Inc. ("Qwest"); Regulatory Commission of Alaska ("AkRC"); Rural Carrier Group ("RCG"); Rural Cellular Association and the Alliance of Rural CMRS Carriers ("RCA/ARCC"); SBC Communications Inc. ("SBC"); South Dakota Telecommunications Association and Townes Telecommunications, Inc. ("SDTA/Townes"); Sprint Corporation ("Sprint"); TCA, Inc. - Telecom Consulting Associates ("TCA"); TDS Telecommunications Corporation ("TDS"); Telscape Communications, Inc. ("Telscape"); United States Cellular Corporation ("USCC"); United States Telecom Association ("USTA"); Verizon; Western Telecommunications Alliance ("WTA"); Western Wireless Corporation ("WW"); and Wireless Division of the Wisconsin State Telecommunications Association ("Wis Wireless"). Failure to address herein any specific argument raised by any specific commenter should not be deemed to be agreement with or acquiescence to that argument. Neither should failure to attribute a particular invalid argument to a specific commenter be looked at as neglect of that commenter's position.

That would be an exceedingly unfortunate result. The Commission should do here what it can do here, and should address other issues in other subsets of this and other proceedings.

As previously stated,³ NASUCA's perspective is on behalf of those who represent both the consumers who are intended to benefit from universal service support and those who pay the support. In that regard, it is notable that many of the commenters who oppose restricting support to a single line per customer, or who oppose adopting more stringent qualifications for ETCs, ignore the need to control the size of the universal service fund. Some commenters say there are better ways to control the fund; and some of those commenters -- mostly rural incumbent local exchange carriers ("RLECs") -- argue, in essence, that the way to control the fund is by severely restricting the competitive ETCs ("CETCs"). Neither of these proposals holds water.

There are two interrelated principles behind NASUCA's position here: First, restricting support to a single line per customer is the best way to prevent the excessive -- and unnecessary -- future growth in the fund that will result from supporting all lines of all carriers. Absent this commonsense restriction, wireless carriers and other CETCs will follow the logical incentive to increase their receipts from the federal fund.⁴ Second, both the proposal to limit support to primary lines and the proposal to raise the bar for ETC

³ See, e.g., NASUCA initial comments at 4; NASUCA ex parte (March 31, 2004).

⁴ There are many other possible sources of fund growth that are beyond the scope of these comments. For example, it has been reported that adoption of the Intercarrier Compensation Forum's proposal to restructure intercarrier compensation will itself add \$2.5 billion to the USF. Legg Mason, "Intercarrier Group Unveils Reform Proposals, Though Obstacles Abound," (August 17, 2004); see <http://www.neca.org/media/LM0804.pdf>. This issue is touched on in Section IV, below.

designation -- as discussed in Section III, below -- will ensure that federal funds are used only for the purposes directed by the 1996 Act.

US Cellular argues that cellular carriers must be allowed to receive high cost funds because they contribute to the high cost fund.⁵ The presumption that those who contribute to the fund must be able to collect from the fund is fatally flawed. For example, interstate long distance carriers contribute to the high cost fund but are ineligible to receive funding (at least for their interstate operations). Further, the notion that there must be parity for carriers between contribution and collection ignores the very purpose of the high cost fund: to transfer support from carriers operating in low cost areas to carriers operating in high cost areas. Indeed, the consumers who ultimately pay into the fund cannot expect such parity; consumers in low cost areas will fund the support that goes to consumers in high cost areas. That is the basis for NASUCA's insistence that the high cost fund -- like the other components of the USF -- be kept to a reasonable level and that the funds be used only for proper purposes.

II. THE FEDERAL HIGH-COST PROGRAM SHOULD SUPPORT ONLY A SINGLE LINE PER CUSTOMER.

The key question of the Commission's inquiry was whether high-cost support should be limited to a single connection that provides a subscriber access to the public telephone network (sometimes referred to as the customer's "primary line").⁶ The comments do not disturb NASUCA's unequivocal affirmative answer to the question. The many comments that oppose restricting support to a single line per customer do so

⁵ US Cellular at 31.

⁶ *NPRM*, ¶ 3.

for inadequate reasons; the comments that support the restriction provide additional support for the necessity of adopting the restriction.

The diversity of parties supporting and opposing the restriction shows the fragmentation of the industry and regulators. Parties supporting a primary line restriction include, in addition to NASUCA, three of the RBOCs (Qwest, SBC and Verizon⁷), AT&T, Cox, GCI and state regulators from California, Missouri and New York.

Parties opposing the primary line restriction -- who assert that all lines of all ETCs must be supported -- include AkRC,⁸ ALLTEL, ATA, AWS, Beacon,⁹ BellSouth, CCC, Centennial, CenturyTel, CSTA/RTC, CTIA, Dobson, FWA, GVNW, Hopi, ITTA, IUB, JSI,¹⁰ MITS, MSCC, Nextel, Nextel Partners, NRIC, NTCA, NTTA, OIU/HTC, OrPUC,¹¹ RCA/ARCC, RCG, RTA, SDTA/Townes, Sprint, TCA, TDS, USCC, USTA, Wis Wireless, WW and WTA. This is also a diverse group, but a group whose reasons

⁷ Verizon's is a highly conditional support, which requires resolution of many extraneous issues. See Section IV.

⁸ As previously discussed by NASUCA, many state regulators have a conflict of interest as far as the primary line restriction goes, as strong as the state regulators' interest in the certification of multiple ETCs in an ILEC's territory. See AT&T at 26-27. It is heartening that few regulators weighed in on the side of supporting all lines.

⁹ Beacon's concerns are for the RLECs' revenue requirements. See section D, below.

¹⁰ JSI challenges NASUCA's assertion that LECs are currently required to distinguish between primary lines and other lines for assessing subscriber line charges ("SLCs"), noting that rural carriers are not required to make this distinction. JSI at 9, n. 22. JSI's challenge is technically correct, because in the *Rate-of-Return Access Charge Order [Multi-Association Group] MAG Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*Rate-of-Return Access Charge Reform Order*"), at ¶ 42, the Commission eliminated the distinction between residential primary and other line SLCs for the carriers covered by that order. Notably, however, prior to the *Rate-of-Return Access Charge Reform Order*, the carriers covered by the order **were** required to distinguish between primary and other lines.

¹¹ The Oregon Commission proposes measures that allegedly address the growth in the fund "directly." See OrPUC at [7]. This includes "capping" the current high-cost fund. Id. at [8]. This arbitrary decision that the current fund is sufficient but no more would not likely pass judicial review.

against restricting support fall far short of those supporting the restriction. And the members of this group have one thing in common: a direct or indirect financial stake in continued support for all lines of all carriers.¹²

A. Restricting support to primary lines is consistent with the Telecommunications Act of 1996 and Congressional intent.

NTCA is blunt about what it believes to be **the** statutory purpose of the high cost program: “to support network infrastructure in order to ensure that telecommunications and information services in rural areas are comparable to those offered in urban areas and at affordable and comparable rates.”¹³ Yet the term “network infrastructure” is not found in Section 254 of the Telecommunications Act of 1996 (“1996 Act”); instead, the 1996 Act says that only those services included in the FCC-defined list of services are to be supported. This provision requires that a “carrier that receives ... support *shall* use that support only for provision, maintenance, and upgrading of *facilities and services for which the support is intended*.”¹⁴ Under Section 254(c)(2), the Commission establishes “the definition of the services that are supported by Federal universal service support mechanisms.”¹⁵ **The commenters who say that all lines of all ETCs must be supported¹⁶ ignore this statutory requirement.** This is a statutory *requirement* that trumps the aspirational principle that customers in rural areas “*should* have access to

¹² Some of the rural ILECs would like to make it more difficult for competitors to achieve ETC status even if the ILECs’ revenue streams were not threatened.

¹³ NTCA at iv.

¹⁴ 47 U.S.C. 254(e) (emphasis added).

¹⁵ 47 U.S.C. 254(c)(1).

¹⁶ See, e.g., USTA at 16.

telecommunications and information services ... that are reasonably comparable to those services provided in urban areas....”¹⁷

Indeed, US Cellular’s statement indicates that the support it and other ETCs receive is misused: “Carriers with new networks use the vast majority of per-line support on network facilities to extend service over a wide area....”¹⁸ Support which is intended to go to current customers is thus used to allow the carrier to gain *new* customers.

Non-primary lines appropriately are not included on the Commission’s list of supported services. Neither are “networks.”¹⁹ Neither are advanced services.²⁰

The WTA identifies common uses for second lines: dial-up Internet access, fax service, “teen lines,” and placing calls while a primary line is being used for those other purposes.²¹ And the WTA asserts that if support is limited to primary lines, these uses will no longer be reasonably comparable between rural areas and urban areas.²² Yet this assumes that multiple simultaneous use of the telephone is a supported service. It is not.

Further, if “networks” are to be supported, the implication is that the support must go to the entire network. That would, of course, include the switch as well as the loop. Thus support would go to the functions of the switch that support broadband service, or

¹⁷ 47 U.S.C. 254(b)(3) (emphasis added).

¹⁸ US Cellular at 43-44.

¹⁹ Despite the claims of federal and state commissioners Abernathy, Adelstein, Rowe and Thompson that universal service support has always supported networks (see RTA at 19-20), their statements provide no support for those claims.

²⁰ See, e.g., NRIC at 20. The invocation of Section 706 of the 1996 Act in the universal service context (see ITTA at 5) ignores the fact that Congress did not specifically direct universal service support to advancing advanced services.

²¹ WTA at 21-22.

²² Id. at 22.

CallerID, or voicemail. Yet those are not supported services. And as for loops, the network of many if not most ETCs also includes fiber loops that are used for advanced services, not for the basic services defined by the Commission.

If these “non-basic” parts of the network are not to be supported, it logically follows that the support must be limited to the network that provides basic service connections. Yet there is no provision of law that requires support for the entire basic service network, especially if that aspect of the network includes multiple connections per customer from multiple carriers. The oft-repeated claims that “networks” are to be supported fail to take this logical step in the analysis.

CenturyTel says that, in rejecting the Joint Board’s original recommendation to limit support to a single line, the Commission stated “that universal service support should be based on the ... costs of constructing and operating *the network* used to provide the supported services.”²³ In fact, the cited paragraph of the *Universal Service First Report and Order* does not even contain the word “network”; it refers exclusively to “connections,” supporting the proposition that entire networks were *not* intended to be supported.

If Congress had intended to follow NRIC’s view that “[f]unding amounts must be predictable and sufficient because of the fixed cost nature of networks”²⁴ it would have made the connection to networks explicit in Section 254; Congress did not do so. TDS claims that “Congress and the Commission recognized [the need to support networks] in initially developing a universal service system that compensates rural carriers based on

²³ CenturyTel at 17 (emphasis in original), citing *Universal Service First Report and Order*, 12 FCC Rcd 8776 (1997) at ¶ 96; see also JSI at 7-8.

²⁴ NRIC at 17 (emphasis in original); see also WW at 9.

their total embedded network costs....”²⁵ Neither TDS nor any other carrier cites statutory language or even legislative history to show that this is required; nor do they cite Commission orders that such an approach is required.

Nextel Partners points to the directive in section 254 that the services supported by federal support will evolve over time.²⁶ At the current time, however, advanced services, networks and second lines are not yet on the FCC’s list of supported services.

Although it is essential that rural areas of this nation continue to receive adequate support for essential telecommunications services, under Section 254 of the Telecommunications Act of 1996 (“1996 Act”), it is not essential that all lines or all services -- including advanced services -- be supported. The original intention of universal service support was to allow all Americans to have an affordable connection to the public switched telephone network. Compliance with the law will not make rural customers “second-class citizens,” as WW asserts.²⁷

Multiple connections per household or business are not “essential to education, health, or public safety,” or the other statutory factors set forth in 47 U.S.C. §254 (c)(1)(A)–(D)).²⁸ **It does not appear that any of the commenters actually assert that multiple connections meet the statutory tests.**

²⁵ TDS at 24.

²⁶ Nextel Partners at 26. Nextel Partners’ citation to the Senate Report on the 1996 Act (id.) ignores the fact that the Conference Report did not adopt this position.

²⁷ WW at 5.

²⁸ The need to address the special problems of tribal areas (as described by Hopi, at 2-3, 5-8; and NTTA at 9-12) does not justify supporting all lines for all carriers throughout the Nation. There are better, more targeted ways to address the “unique circumstances existing on Indian reservations.” Hopi at 8. See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-202A1.pdf.

RCG says that long-term growth in access lines shows that the Joint Board recommendation is “in violation of its mandated statutory duty to take such trends into account when deciding which services to support.”²⁹ The statutory duty referred to is that imposed by 47 U.S.C. 254(c)(1), which requires the Joint Board “to consider the extent to which such telecommunications services ... (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers....” Neither the 18% penetration for non-primary lines relied on by RCG to make its accusation, nor even the 29% penetration in California, represent “a substantial majority” of residential customers.

RCG also asserts that “with wireless penetration levels reaching over 50%, the Joint Board risks being in violation of its duty...”³⁰ As noted in NASUCA’s initial comments, the proper wireless penetration number to use is the 5% or so of customers who have dropped their landline in favor of wireless.³¹ Even if RCG’s number (“over 50%”) is used, however, “over 50%” still does not constitute a “substantial majority.” Further, even if a substantial majority of residential consumers subscribed to wireless service, it would still be appropriate to support only a single wireless service per residence unless second and third wireless connections also had over 50% penetration. Nextel Partners also quotes the section 254(c)(1) language regarding the need for a

²⁹ RCG at 4.

³⁰ Id. at 5. The penetration figure cited by RCG appears to include both residential and business customers.

³¹ NASUCA initial comments at 5, n.12.

“substantial majority” of residential customers to subscribe,³² yet fails to acknowledge that the services it refers to do not meet that test.

Universal service support should be used to provide access to services, but not to artificially promote competition for those services. According to ALLTEL, “the highest goal of the Act’s universal service provisions -- and particularly in so-called non-rural areas -- is the provision of meaningful consumer choice among truly differentiated two-way voice services.”³³ Unfortunately for ALLTEL, neither the goal nor the priority ALLTEL assigns to it can be found in Section 254.

WW cites the importance of wireless service in rural areas, and cites statistics such as that “[i]n largely rural states like South Dakota, Nebraska and Mississippi, [the] trend has resulted in such states having *more wireless subscribers than local exchange access lines*.”³⁴ Thus wireless competition is occurring apace; **it does not need universal service funding**.

ALLTEL’s assertion that “the Act ... speaks in terms of individual ‘consumers’ and attempts to break the nexus between the one-line/one-household notion of conventional universal service in the strict wireline tradition”³⁵ is a complete non sequitur. ALLTEL cites neither statutory language nor case authority for this novel proposition.

³² Nextel Partners at 8, 26. Nextel Partners cites the Senate Report on the 1996 Act, but overlooks the fact that the Conference Report does not contain similar language.

³³ ALLTEL at 2.

³⁴ WW at 15, citing the Commission’s June 2004 Local Competition Report (emphasis in original).

³⁵ Id. at 7.

Universal service support that provides single-line access will be sufficient for the statutory purposes.³⁶ None of the commenters seriously dispute this, other than simply to assert that support should go to services and facilities not currently on the list. For example, the WTA says that, if support is limited to primary lines, “the ILEC’s remaining support will not be ‘sufficient’ to achieve the universal service purposes of operating a network that provides quality and affordable services to its remaining customers.”³⁷

CCC asserts that “[a] single connection does not, and cannot, provide a subscriber access to the [public switched telephone network] PSTN. Multiple connections, in the aggregate, create a system capable of providing the subscriber access to the PSTN.”³⁸

NECA actually claims that “individual primary connections do not have the capacity to provide services -- rather, networks that include both primary and non-primary connections are needed.”³⁹ Far from it: A network consisting of only primary connections would function perfectly.

Connections, in the aggregate, form the network. Yet each customer need not have multiple connections in order to reach other customers; a single connection *per customer* will suffice to give access to the PSTN.

As a final exercise in overreaching argument, CCC asserts that restricting support to a single line conflicts with state authority under Section 214 to designate ETCs.⁴⁰ This is supposedly because restricting support to primary lines eliminates the provision of

³⁶ See RD, ¶ 64.

³⁷ WTA at 26.

³⁸ CCC at 6-7.

³⁹ NECA at 6.

⁴⁰ CCC at 10.

support “throughout the service area.”⁴¹ Section 214(e)(1) refers, of course, to “support in accordance with section 254”; support limited to primary lines throughout any ETC’s service area does not conflict with any state authority granted by the 1996 Act.

B. Restricting federal support to primary lines will not harm consumers or carriers in rural areas.

NTCA, on behalf of its 560 rural ILEC members,⁴² says definitively that “[a]ny reduction in high-cost support due to limiting support to primary lines would adversely affect the ability of rural carriers to deliver all but a basic connection to consumers living in rural, high cost and insular areas.”⁴³ Because, as discussed above, the Telecommunications Act of 1996 Congress determined that support was to go only to the list of services set by this Commission with the advice of the Joint Board, and because services beyond a basic connection are not currently on the list, the effect predicted by NTCA would not violate the 1996 Act.

Yet none of NTCA’s 560 members -- nor any other RLEC -- gives the Commission any information on the specific adverse impact that limiting high cost support to a single line per customer would have on its customers. In fact, **there are no RLEC claims about the specific number of non-primary lines they currently serve that will lose support, or the specific impact that will have on their other services.**

⁴¹ Id., citing 47 U.S.C. 214(e)(1).

⁴² NTCA at 1, n. 1.

⁴³ Id. at 7 (emphasis added).

No such claims come from associations, or from individual RLECs.⁴⁴

RTA does hypothesize the impacts on a hypothetical RLEC that loses 50% of its primary lines to a CETC.⁴⁵ This massive loss of lines -- clearly the result of successful competition -- leads, in this scenario, to a loss of 10% of the ILEC's total revenue, based on the assertion that an average 20% of RLECs' revenue comes from the federal USF.⁴⁶ Under the further assumption that 40% of the hypothetical RLEC's revenues come from local service, RTA says that the RLEC might have to regain the 10% of lost revenue from local service, supposedly causing a one-fifth increase in local rates. Yet whether the RLEC is entitled to any rate increase for local service -- for instance, if even the loss of 10% of its revenues still leaves it earning a reasonable return -- and how that increase is to be recouped (from which services), are matters for state regulation.⁴⁷

In a more realistic example, if the RLEC loses 10% of its current primary lines to a CLEC, and another 10% of the RLEC's lines are non-primary, the RLEC would lose 20% of its high cost funding. The loss of 20% of high cost funding is a loss of 4% of total revenues -- again assuming that 20% of the RLEC's total revenues is high cost funds. Again, under the further assumption that 40% of the hypothetical RLEC's

⁴⁴ Notably, many of these RLECs are members of coalitions that, in their intercarrier compensation proposals, support substantial increases to the price of local service in order to make up for lost access charge revenues. These carriers' concern for their customers' rates in the universal service context thus rings hollow.

⁴⁵ RTA at 18; see also Beacon at 14. The example does not make clear whether the RLEC loses the customers' subscriptions to the lines or just the primary line designation.

⁴⁶ Interestingly, NECA, RTA's source of information, made no specific numerical prognostication in its comments.

⁴⁷ Under the rate comparison plan recently adopted by the Commission for *non-rural* companies, if these increases would result in rates that were no longer reasonably comparable to urban rates, the state would be able to apply for additional federal funding. See 96-45, Order on Remand, FCC 03-249 (rel. October 27, 2003), ¶¶ 93-96.

revenues come from local service, this RLEC might seek to recoup the 4% of lost revenue through a 10% increase in local rates. And whether this RLEC is entitled to any rate increase for local service -- for instance, if the loss of 4% of its revenues still leaves it earning a reasonable return -- and how that increase is to be recouped (from which services), is up to the state that the RLEC operates in.

RCG uses Commission statistics to say that “18% of nationwide residential households utilize additional wireline connections to the public telephone network.”⁴⁸ Yet the ultimate source of RCG’s data -- Table 2.4 of the Commission’s *Statistics of Common Carriers*⁴⁹ -- shows a considerable variation state-to-state in the penetration of multiple lines, suggesting that this is a state-specific issue.⁵⁰ Indeed, in California, it appears that 29% of the households have additional lines, the highest for any state. The sheer number of lines in California skews the national average. The impact is much more an issue for individual states than a federal concern.⁵¹

BellSouth asserts that, in the absence of support for all lines, the “carrier would have to charge higher rates for non-primary line service -- rates that would not be affordable to the public.”⁵² In reality, BellSouth’s concerns are exaggerated, at least for a company like BellSouth. According to USAC, BellSouth in Alabama will receive \$12

⁴⁸ RCG at 4, citing Table 7.4 of *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau (May 2004). RCG asserts (at 4) that this represents an “ever-increasing use of multiple connections” since 1988. Actually, Table 7.4 shows that penetration of multiple lines peaked in 2001, and in 2002 was lower than in 1997.

⁴⁹ See Table 7.4 of *Trend in Telephone Service*, *supra*, at note 1.

⁵⁰ Recent confidential data in an Ohio TELRIC proceeding suggests that the 18% is vastly overstated.

⁵¹ USTA’s suggestion (at 20) that carriers “may need to raise” SLCs assumes that this Commission would allow a decrease in high cost support to be accompanied by such an increase.

⁵² BellSouth at 9.

million in high cost support for 2004.⁵³ According to Table 7.2 of *Statistics of Common Carriers*, BellSouth has 1.9 million loops. If we assume that 20% (380,000) of BellSouth's lines are either second lines or would lose their designation as primary line to a CETC, BellSouth would lose \$2.4 million of its support. If we also assume that BellSouth would be entitled to recover every penny of the lost support from those non-primary lines, the amount to be recouped would be \$6.32 **per year per line**, or 53 cents per month. BellSouth's current Alabama rate is \$26.76.⁵⁴ A 53 cent increase (less than 2%) would not result in rates that are not affordable, or at least substantially less affordable than the current rates.

Dobson raises the same concern for wireless carriers, that the non-supported secondary lines per household will see rate increases.⁵⁵ Yet wireless carriers that are ETCs do not, by and large, have different rates for their ETC areas than for their non-ETC rural areas; there would be even less excuse for wireless carriers to have different rates for one line per household than for the others.

RTA says that increases in the price for second lines will disproportionately impact very small businesses, because of their higher per-unit costs.⁵⁶ This is nothing uniquely attributable to non-primary telephone services; *any* input price increase disproportionately impacts very small businesses because of their higher per-unit cost. Yet again, in any event, whether and how much small business non-primary lines would

⁵³ USAC, 4Q04 annualized.

⁵⁴ Federal Communications Commission, *Reference Book of Rates, Price Indices and Household Expenditures for Telephone Service* (July 2004), Table 1.3.

⁵⁵ Dobson at 20.

⁵⁶ RTA at 24.

increase if support is limited to a single line per customer will be decided by state commissions, as will residential non-primary line rates.

As painful as it may be to hear for rural carriers, encouraging investment in rural areas is not the primary purpose of the federal high-cost fund. That purpose is for consumers in rural areas to have access to the supported services at rates comparable to those in urban areas. Thus, for example, broadband service and investment will be supported when broadband is added to the definition of supported services.

C. Parties advocating continued support for multiple connections have failed to address the cost difference between providing primary and additional lines.

Of the carriers who seek support for all lines, and who say that removing support for non-primary lines will cause rates for those lines to increase, none actually claim that second and third lines have incremental costs that would justify such increases. Given the arguments that non-primary lines actually have substantially lower incremental costs than primary lines,⁵⁷ this is another significant gap in their claims.

D. The USF is not intended to be a cost-recovery or revenue guarantee mechanism.

IUB states that, “regardless of the approach taken by the FCC to protect fund sustainability, the high cost support flows to the small rural companies should be maintained.”⁵⁸ This sentiment is echoed by the small rural companies, their associations, and USTA.⁵⁹

⁵⁷ NASUCA initial comments at 17-18.

⁵⁸ IUB at 7.

⁵⁹ See, e.g., ATA at 7.

USTA makes clear that its real objection to the primary line restriction is the loss of any support to rural incumbents, even if those incumbents lose lines to CETCs.⁶⁰ Actually, then, this is not a primary/non-primary issue, except by contrast to the current system where incumbent rural carriers are guaranteed no loss in support no matter how many lines CETCs win.⁶¹ The universal service fund is not, and was not intended to be, a revenue guarantee.

None of these commenters can get around the Fifth Circuit's finding in *Alenco* that "[t]he Act does *not* guarantee all telephone service providers a sufficient return on investment... The Act only promises universal service, and that is a goal that requires sufficient funding of *customers*, not *providers*."⁶² This statement undercuts, for instance, USTA's argument that only full universal service funding allows rate of return carriers to earn their "designated profit,"⁶³ and devastates RTA's complaint that "supporting a single connection may not ensure sufficient funding of every ETC."⁶⁴

TDS says that "the amounts rural ILECs recover from the Universal Service Fund are determined basically by calculating the costs of maintaining the local network, subtracting the amounts that are recovered through the payment of affordable subscriber rates, and recovering the difference from the Fund."⁶⁵ TDS' view obscures the question

⁶⁰ USTA at 21.

⁶¹ See CenturyTel at 22.

⁶² *Alenco v. FCC*, 201 F.3d 601, 620 (5th Cir. 2001) (emphasis in original). Some of the commenters cite *Alenco*, but overlook this crucial finding. See, e.g., CTIA at 15.

⁶³ USTA at 21; see also Beacon at 7, NECA at 3.

⁶⁴ RTA at 21.

⁶⁵ TDS at 18-19.

the Commission should examine: Is that the *right* way to promote universal service, especially for a multi-state holding company like TDS? Paying support based on forward-looking cost would be sufficient payment for an efficient carrier; the proposition that all rural ILECs' costs are efficiently incurred would make those carriers unique in a competitive environment, and even more so in a legacy monopoly environment.⁶⁶

The same response is possible to those who argue that limiting support to a single line per customer would make support not "sufficient," as directed by § 254(b)(5).⁶⁷ At its core, this is an argument that the support would not be sufficient to maintain a guaranteed revenue stream for rural carriers. The Joint Board correctly noted that "supporting primary connections better fulfills the sufficiency requirements of the Act."⁶⁸

E. Limiting support to a single line per customer is competitively neutral.

WW apparently views the single line support proposal in the RD as a specific attack on wireless ETCs.⁶⁹ In fact, WW describes the proposal as counter to the Commission's "efforts to lower the barriers that discourage the deployment of robust wireless service ubiquitously throughout rural areas."⁷⁰ Removing barriers to ubiquitous wireless service is not one of the directives of Section 254. Any such Commission efforts must be accomplished outside of the high cost fund.

⁶⁶ NASUCA does not support all of the points raised by the Economics and Technology, Inc. ("ETI") study performed for WW. See WW at 16, n. 30. But neither does NASUCA support all the points in Dr. Lehman's study attempting to refute ETI's work.

⁶⁷ See, e.g., CCC at 6.

⁶⁸ RD, ¶ 64.

⁶⁹ See WW at 2-3.

⁷⁰ Id. at 3.

On the other hand, NRIC says that “[w]ithout wireless ETCs being subject to the same price regulation and quality of service standards as the wireline ETCs, the process of acquiring primary line designations would not be competitively neutral.”⁷¹ Even assuming the validity of NRIC’s and WW’s points -- that is, that in one way supporting only primary lines favors the RLECs, and in another way favors the wireless ETCs -- it appears that the anti-competitive aspects would balance out.

The USF should be competitively neutral, but it should not be used to artificially *create* competition. Some explicitly state that promotion of competition should be the purpose of universal service support,⁷² but they do not cite any statutory provision in their arguments.

On the other hand, RTA says that “it does not serve the public interest to create an environment for ETCs that is similar to the market for long distance....”⁷³ This presumes that it is somehow not in the public interest for ETCs to compete against each other -- like long distance companies -- for the customer’s ballot. Limiting support to primary lines will ensure that the high cost support system is competitively neutral for all parties, and ensure that all ETCs will compete for the universal service support.

⁷¹ NRIC at 18; see also WTA at 30.

⁷² See, e.g., ALLTEL at 2.

⁷³ RTA at 27.

F. Reasonable methods should be adopted to allow consumers to designate their primary line.

Qwest's solution to the designation of primary lines is that "the first connection provided to the customer is deemed the primary connection."⁷⁴ Qwest does not specify how it will be determined which connection was "first," but it doesn't matter much: Qwest admits that "[g]enerally" the ILEC would be the first connection.⁷⁵ That approach abandons any pretense of competitive neutrality. NASUCA's proposal for balloting puts the choice where competition is supposed to put it, in the hands of consumers.⁷⁶

ALLTEL, on the other hand, presumes that the designation of the primary line must be based on "actual usage data."⁷⁷ Usage is, of course, not necessarily the only signal of the importance, or primacy, of a line.⁷⁸ That is, again, why NASUCA believes that the choice should be in the hands of consumers, through balloting.

It should be noted, however, that balloting is only necessary where there is a CETC, or when a CETC enters a study area. Where the ILEC is the only ETC, the ILEC can determine which of a customer's lines is primary, although the line with the oldest vintage would most appropriately be deemed primary.

If the Commission determines that the current record is inadequate to support a specific method of balloting, a broad-based group tasked with defining the process should

⁷⁴ Qwest at 3.

⁷⁵ Id.

⁷⁶ By contrast, NASUCA's proposal that if no ballot is received from the customer the line will default to the ILEC allows customer choice while recognizing the ILECs' carrier of last resort obligation.

⁷⁷ ALLTEL at 7-8.

⁷⁸ CCC presents reasons why usage might not be appropriate to use. CCC at 8-9.

be convened by the Joint Board. NASUCA would be pleased to be part of such a collaborative.

Sprint's objection to allowing customers to choose their primary line is that "[i]f consumers were asked to decide which of their carriers is 'primary,' they would have no rational way of making that decision unless there were consequences for the consumers -- i.e., rates for non-primary lines were permitted to increase."⁷⁹ Such rate increases will, first of all, likely cause the customer to drop the non-primary carrier, and will also make the customer's selection of the rate-raising carrier as primary very unlikely. Increased second-line rates are scarcely the only rational basis for customer choice. Sprint's theoretical argument makes no realistic sense.

CTIA cites the *1999 Primary Line Order* and notes the problems that arose from the definition of primary lines in that order, but says that different issues would apply here.⁸⁰ NASUCA agrees. The primary line definition in the *1999 Primary Line Order* involved the establishment of the presubscribed interexchange carrier charge ("PICC"), which could be passed directly on to end users; the current inquiry involves withdrawal of support from non-primary lines which -- for a number of legal and policy reasons -- cannot be passed directly to end users.⁸¹

In the end, the fundamental question is as posed by USAC: How can the situation where multiple individuals at the same address can designate single primary lines be

⁷⁹ Sprint at 18.

⁸⁰ CTIA at 19, citing *In the Matter of Defining Primary Lines*, CC Docket No. 97-181, Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4205 (1999) ("*1999 Primary Line Order*").

⁸¹ Indeed, the Commission's rationale for differentiating between primary and non-primary lines in the *1999 Primary Line Order* was fundamentally different than it is here. See *1999 Primary Line Order* at 8.

distinguished from where a single customer has multiple lines?⁸² Here, as in many other situations, Mephistopheles is in the minutiae.

GVNW asks some very specific practical questions,⁸³ but NASUCA's proposed balloting process⁸⁴ would address most of them, as it would address the questions raised by others.⁸⁵ GVNW's questions, and NASUCA's answers, include:

- Can the customer designate which of their lines is primary? *Yes, through balloting.*
- Whether the primary line is the first line to an address or the line that has the most usage at the address? *Not necessarily either: The primary line for each customer will be the first line for which the customer submits a ballot.*
- Can the customer designate more than one line as being primary in certain circumstances? *No.*
- Can a customer designate more than one line if each of the designated lines is provided by a different carrier? *No.*
- If multiple families live at one address, will each family be able to designate a primary line? *Yes, to the extent that each family has a separate subscription to service. Support should go to a single line per household, but attempting to determine how many households are at a single address will be intrusive. Thus each subscriber at a single address should be treated as a separate household.*
- If a single family has separate phones for different family members, can each family member have a primary line? *No.*
- If not, who has the authority to determine which is primary and which is not? *The customer of record, but USAC should accept the first designation from an address.*

⁸² USAC at 8.

⁸³ GVNW at 10-11.

⁸⁴ NASUCA initial comments at 25-27.

⁸⁵ See, e.g., BellSouth at 11, WTA at 32-33.

- Do such distinctions depend on whether the lines are billed to the same subscriber name on a common bill or to different subscriber names on separate bills? *Yes.*
- If a person has a phone, but no address, can the phone be considered primary? *This question would apply only to wireless service, because wireline service by definition has an address, but the simple answer is Yes. If the Commission decides that support for wireless service to homeless or transient persons (regardless of income) is an issue that needs to be decided, comment should be sought on the issue. Such abstruse questions should not delay, however, the fundamental decision not to support all lines of multiple carriers for a single customer.*
- How will information needed to administer this distinction be gathered? *By balloting.*
- Will each carrier be required to supply other carriers the specific information about each customer? *Only USAC will need to review this information. See Attachments to these reply comments.*
- Will the FCC require that a clearing house be instituted that will gather all of the pertinent information from all customers and carriers, and then share it with each carrier as needed to make the determination? *No.*
- Will each carrier have to obtain information from the customer as to what services he is obtaining from other carriers? *No.*
- How would a wireless carrier know whether landline service is active at a particular address?⁸⁶ *It would not be up to the carrier to know; the determination would be made by USAC through comparing ballots.*
- Who will monitor/police this process? *USAC will collect the results of the balloting.*

Additional questions asked by others include:

- Would unmarried couples living in one residence be allowed two primary lines and married couples only one?⁸⁷ *If the couples had separate subscriptions to their respective services in their respective names, they would be allowed separate primary lines.*

⁸⁶ Centennial at 13.

⁸⁷ ATA at 9; see also WTA at 32.

- If a husband and wife separate, can each then have his or her own “primary” wireline and/or wireless phone? If a husband and wife each had a “primary” wireline or wireless phone before marriage, do they have to designate a single “primary” wireline or wireless phone after their wedding?⁸⁸ *If they “separate” to separate residences, they can each have their own primary line (unless they move somewhere where there is already a primary line). After a wedding -- with the couple presumably now living together -- if they have a single subscription with the carrier they will have a single primary line.*
- Would a second home (vacation home) be allowed a primary line and, if so, would a motor home be justification for a cellular phone as a second primary line?⁸⁹ *Although it would be preferable not to support lines in a vacation home,⁹⁰ the administrative difficulties of preventing such duplication -- for example where the year-round home and the vacation home are in different states and are served by different ILECs that receive high cost support -- would not justify eliminating this overlap in support. These difficulties do not, however, in any way justify continuing to support multiple carriers per address for all customers.*
- What happens when a 23-year old takes his wireless phone from his parent’s home to his graduate school apartment and then to a group house within a particular year? How much of the year will the wireless phone be deemed a “primary line” eligible for support?⁹¹ *If throughout his mobile life the graduate student continues to be the customer of record on the account, then the service will continue to be primary line service.*
- What if there are residential and business lines at the same location?⁹² *One primary residential line and one primary business line at the same location would be allowed.*

GVNW asks if the definition of primary line would be limited to residential and single-line business.⁹³ Such a limitation implies that although residential customers and

⁸⁸ WTA at 32.

⁸⁹ ATA at 9.

⁹⁰ See NASUCA comments to the Joint Board (May 4, 2003) at 7.

⁹¹ WTA at 33.

⁹² NECA at 11.

⁹³ GVNW at 10.

single-line businesses could only receive support for a single line, multiple line businesses would still receive support for all of their lines. NASUCA's response is that all consumers would be covered by the limitation of support to a single line per customer; to do otherwise would disproportionately lift the burden from the largest businesses.

It should be feasible to combine each customer with the customer's address in a bar-coded ballot that USAC would scan, with problems arising only where two or more ballots for the same customer for the same address are submitted. Again, the situation where an occasional customer games the system in order to have more than one "primary" line is clearly preferable to a system that automatically supports multiple lines of multiple carriers per customer.⁹⁴

NECA raises questions about dispute resolution among carriers.⁹⁵ Yet for a single line, the amount of support at risk will most likely be insufficient to make disputes over that line worthwhile. (Indeed, NASUCA's proposal to limit multiple ETCs to areas receiving less than \$30 support per month guarantees that result.)

Cox supports allowing customers to choose their primary line, but would "permit customers to verbally [sic; presumably Cox means 'orally'] communicate to the ETC that it is the provider of primary-line service."⁹⁶ Although this would be less burdensome for

⁹⁴ This responds to USAC's concerns (USAC at 8-14) about its increased monitoring and other administrative responsibilities. The primary line designation should receive no more and no less scrutiny than the other parts of the universal service fund.

⁹⁵ Id.

⁹⁶ Cox at 11.

carrier and customer,⁹⁷ hard copies make auditing more effective, as Cox (and NASUCA) acknowledge is necessary.⁹⁸

AWS states that “[t]he balloting design would have to resolve the inherent conflict between providing certainty to carriers by setting a specific period of time in which the support flow would be locked in to particular line and flexibility to customers by allowing them to revise their choices if they so desire.”⁹⁹ NASUCA submits that its proposed six-month effective period for the line designation meets both needs.¹⁰⁰ USAC supports at least quarterly if not more frequent updates,¹⁰¹ but does not explain why -- none of the other data it uses are updated more often than quarterly. A six-month interval balances the interests of consumers not to be harassed by this issue, for carriers for some certainty, and for USAC for reasonable auditability.

The WTA’s prediction that, as result of allowing customers to pick their primary lines, “critical universal service revenue streams will fluctuate widely and unstably from month to month...”¹⁰² is another example of the carriers’ hyperbole; WTA’s further claim that even if changes in designation of primary lines were limited to once per year, “high cost revenue streams would still be too unpredictable to support the multi-year business and investment planning required in the capital-intensive telecommunications

⁹⁷ Id.

⁹⁸ Id. at 9.

⁹⁹ AWS at 2.

¹⁰⁰ See NASUCA initial comments at 26.

¹⁰¹ USAC at 10.

¹⁰² WTA at 25.

industry”¹⁰³ insists on a degree of certainty in this area of economic life that is not present anywhere else.

Indeed, this concern that high cost support would become unpredictable -- a concern shared by NECA¹⁰⁴ -- assumes that support under the current regime is predictable. Perhaps for the carriers, it is, because to date support has done nothing but increase. By supporting all lines of all carriers, the fund has grown to be more than sufficient. It should be reduced, and its future growth should be restrained.

WTA raises the following general issue: “Whereas a household may be served by one or two wirelines that can be readily counted, every full-time and part-time resident of a household may have his or her own wireless phone, may use the wireless phone at a variety of locations, and may be billed for wireless service at home, at work, at a post office box, or at some other location.”¹⁰⁵ For wireless carriers, the most feasible way of assessing where a connection is “located” is to use the billing address. Only one of the lines billed to a particular customer at a specific address can be designated as primary. Again, the possibility that some customers will have more than one primary line is not reason enough for the Commission to throw up its hands and continue to support all lines of all carriers.

¹⁰³ Id. at 25.

¹⁰⁴ NECA at 4.

¹⁰⁵ WTA at 31.

Dobson cites the difficulty of explaining to consumers the difference between primary and non-primary lines.¹⁰⁶ Yet does that difficulty justify supporting all lines of multiple carriers? NASUCA assumes that it does not.

RTA worries about the possibility of support being given to more than one line per household where household members each claim a primary line to avoid paying extra for non-primary lines.¹⁰⁷ Of course, this scenario depends on the existence of a price differential between primary and non-primary lines. As explained elsewhere, the difference is not a certainty, and is within the control of state commissions. But RTA's argument raises a more fundamental point: Must we support all lines in order to avoid certain consumers gaming the system? Under this philosophy, the wealthiest man in America should receive welfare because somewhere someone else undeserving might seek and obtain benefits.

As noted above, if the only real alternative to arbitrage and gaming is continuing to support multiple lines for multiple carriers for each customer, which is worse? And even if the transition to a single-line-support system imposes costs, as CenturyTel asserts,¹⁰⁸ those costs will not come anywhere near the current costs of continuing support beyond the statutory requirements.

¹⁰⁶ Dobson at 19.

¹⁰⁷ RTA at 27.

¹⁰⁸ CenturyTel at 20.

Finally, TCA notes that administrative issues led the Kansas Commission to reject a primary line methodology for its state USF.¹⁰⁹ Yet California, with far more lines affected, does limit support to primary lines.¹¹⁰

G. Supporting only a single line per customer is essential for the future of universal service support in telecommunications.

Parties argue that supporting all lines for all ETCs is not the source of the growth in the USF.¹¹¹ They point to the fact that, as of 2004, CETCs receive only 7% of high-cost funds.¹¹² NASUCA does not deny this. The CETCs themselves, however, ignore the explosive growth in the portion of high cost funds received by CETCs, especially wireless ETCs.¹¹³ More importantly, once again, **none of the commenters challenge the estimates that, if all lines of all ETCs are supported, the growth in the fund will be in the range of \$2 billion annually.**¹¹⁴

CSTA/RTC give concrete examples of the fundamental problem with supporting all lines of multiple ETCs in a study area. In Washington, four ETCs have been designated in one rural ILEC's 600 access line territory; in Oregon, three ETCs in one rural ILEC's 300 line territory; four ETCs in territory in rural Alabama.¹¹⁵ Under current practice, all the lines of all of these carriers are supported.

¹⁰⁹ TCA at 12.

¹¹⁰ California at 7.

¹¹¹ See, e.g., WW at 16.

¹¹² Id.

¹¹³ NASUCA initial comments at 8.

¹¹⁴ Certainly, none of the wireless carriers that commented disclaimed interest in receiving high cost funding; quite the contrary, the wireless carriers jealously argued their right to receive these funds.

¹¹⁵ CSTA/RCA at 16.

The issue is fundamentally not one of supporting wireline carriers instead of wireless carriers, or of supporting incumbents instead of competitors. The problem is of supporting all lines of all wireline carriers and all wireless carriers, and of supporting all lines of incumbents in addition to all lines of competitors. The duplication of support inherent in supporting multiple lines from multiple carriers for each customer is the issue here.

H. The Commission should adopt transitional measures for rural carriers to mitigate the impact of the shift to supporting only a single line per customer.

NYDPS asserts that no transition mechanism is needed, but notes that restatement of support on a primary line basis “is the only suggested option that is transitional in nature.”¹¹⁶ NASUCA agrees with the latter point, but, out of respect for the limited resources of rural carriers, has proposed that restatement be adopted as a transitional measure.¹¹⁷

AWS’ first point and CTIA’s second point of opposition to restricting support to a single line per customer is not to the restriction *per se*.¹¹⁸ Their opposition is, instead, to each of the three transition mechanisms discussed in the RD.¹¹⁹ NASUCA also disapproved of the second and third mechanisms.¹²⁰

¹¹⁶ NYDPS at 3.

¹¹⁷ NASUCA initial comments at 31.

¹¹⁸ See AWS at 1; CTIA at 15-17; see also Sprint at 14-17.

¹¹⁹ *Id.*

¹²⁰ NASUCA initial comments at 31.

Apparently, CTIA's objection to the restatement of support is that "[b]ecause competitive ETCs typically have a smaller percentage of primary lines relative to second lines than incumbents, competitive ETCs would receive less total support than they received prior to the restatement."¹²¹ CTIA does not provide any data to back up this statement. Taken literally, CTIA is saying that, for example, out of a hundred CETC lines in a study area, for example, only twenty would be "primary," whereas for the ILEC eighty out of a hundred lines would be primary. Attaching a dollar amount to this puts the argument into perspective. If the ILEC currently receives \$10,000 in high cost support, that is \$10 per line. Upon restatement, the total support for the ILEC would remain at \$10,000, but would be \$12.50 for each of its 80 primary lines. On the other hand, the CETC currently receives \$10,000, \$10 for each of its 100 lines. Upon restatement, the CETC will receive \$2,500, \$12.50 for each of its 20 primary lines. This disproportionate impact on CETC is unreasonable, however, only under the presumption that all lines of all carriers deserve support.¹²²

AkRC opposes the rebasing alternative, but only because of its substantial impact on the incumbent.¹²³ AkRC's hyperbolic example is not much support, however. Table 2 to AkRC's comments posits an incumbent with 5,000 lines. A CETC enters, and serves 3,000 lines. Of the incumbents' 5,000 lines, only 2,000 are primary; the CETC has 1,000 primary lines. That means that those 1,000 lines used to be ILEC "primary" lines. That

¹²¹ CTIA at 16.

¹²² The fairness or unfairness of this result also depends upon whether the CETC's costs are greater than or, more likely, lower than the ILEC's embedded costs.

¹²³ AkRC at 5.

means that of the hypothetical rural ILEC's 5,000 lines, 2,000 -- or 40% -- were second and third lines per household.

It might be possible to run the numbers with a more realistic primary line count, but it is not necessary. Under the public interest thresholds discussed in Section III., below, the territory of AkRC's exemplary ILEC, which receives \$33 a month per line in support, would be one that would only be able to support a single ETC. The impact on an ILEC with lower per month support levels would, of course, be proportionately less.

III. ETC DESIGNATION ISSUES

The majority of commenters support the adoption of additional standards for ETC designations. Some support only the adoption of permissive federal guidelines.¹²⁴ Others, like NASUCA, believe that there should be mandatory federal standards for the disbursement of federal dollars.¹²⁵ NASUCA admits that some of those supporting mandatory standards are rural incumbents whose mission is simply to make certification of CETCs less likely.¹²⁶ NASUCA does not support this monopolist attitude. NASUCA submits, however, that there is a balance between encouraging competition and placing proper public interest conditions on the disbursement of federal funds. The comments here -- like those above on the single line support issue -- focus on those who oppose the adoption of mandatory standards.

¹²⁴ AWS, Beacon, CCC, CTIA, Dobson, FWA, NTCA and NRIC. The state commissions all support permissive guidelines; it is understandable that these bodies do not wish to lose any power in this area. See AkRC, California, IUB, MoPSC, NYDPS and OrPUC.

¹²⁵ ATA, AT&T, BellSouth, Centennial, CenturyTel, CSTA/RTC, FWA, ITTA, JSI, MSCC, MITS, NECA, OIU/HTC, RTA, SBC, SDTA/Townes, TCA, TDS, USTA, Verizon and WTA.

¹²⁶ See, e.g., WTA at 1-2.

A. The Commission should raise the bar for receipt of high-cost funds.

A minority of those commenting -- including those who directly or indirectly profit from the broadest possible disbursement of high cost funds -- oppose the adoption of even permissive guidelines that raise the public interest standard.¹²⁷ Some even argue that the Commission lacks the authority to raise the standards and thereby deny support to a carrier that has received it under the lower standard.¹²⁸

Nextel argues that any guidelines should not exceed those delineated in the *Virginia Cellular* and *Highland Cellular* orders.¹²⁹ Nextel does not cite any language used in those orders that they were intended to be the Commission's final word on ETC designation. Indeed, Nextel overlooks the Petitions for Reconsideration filed in those proceedings which argue that the Commission lacked the authority to adopt new standards in the context of individual ETC applications and that new standards must be adopted in rulemakings -- like this one.¹³⁰

Nextel Partners asserts that "[t]aken as a whole the proposed guidelines signal to the states that the Commission no longer supports the principle of competitive neutrality."¹³¹ Adopting high standards for the receipt of federal funds in fact does precisely the opposite: The standards will apply to all carriers seeking ETC designation, whether ILEC or CETC, whether wireless carrier or wireline.

¹²⁷ ALLTEL, Cox, GCI, Nextel, Nextel Partners, RCA/ARCC, USCC and Wis Wireless. WW opposes some of the specific guidelines but would insist that any guidelines adopted be competitively neutral. NASUCA agrees; unfortunately, "competitively neutral" is often in the eye of the beholder.

¹²⁸ USCC at 20-23.

¹²⁹ Nextel at 16; see also ALLTEL at 5-6.

¹³⁰ See, e.g., 96-45, Virginia Cellular LLC Petition for Reconsideration (filed February 23, 2004).

¹³¹ Nextel Partners at 17.

ALLTEL's opposition to the adoption of additional requirements is based on the view that "additional service requirements ... stifle the provision of truly differentiated service offerings by competing carriers."¹³² Of course, as discussed above, ALLTEL also believes that "the highest goal of the Act's universal service provisions" is to promote competition,¹³³ a purpose lacking from the explicit language of section 254.

B. The Commission should adopt mandatory minimum guidelines for state commissions to consider when designating ETCs.

In initial comments, NASUCA stated that guidelines like those discussed in the RD should be adopted. However, NASUCA stated, "the guidelines should not be permissive, able to be used or ignored, upon a state's whim. The guidelines should be minimum federal standards for the expenditure of federal dollars."¹³⁴

Nothing that is said in the comments about the merits of "permissive" guidelines is rendered untrue by making them mandatory. Indeed, the benefits of guidelines are reinforced by making them mandatory. None of the commenters provide an explanation of why "non-binding" guidelines are superior to mandatory directives. In fact, Nextel Partners accurately sums up the problems with permissive guidelines:

They would not be required; they would not establish a floor or ceiling on the states' public interest review authority; and they would not be anything different than what the Recommended Decision notes states are already doing today. The proposed permissive guidelines would be nothing more than an unnecessary federal redundancy.¹³⁵

¹³² ALLTEL at 3.

¹³³ Id. at 2.

¹³⁴ NASUCA initial comments at 40-41.

¹³⁵ Nextel Partners at 15.

Nextel Partners does not assert -- and neither did the RD -- that all states are following the public interest guidelines discussed in the RD. That is another reason why the guidelines should be mandatory, not permissive.

Cox appears to be schizophrenic on this issue. Cox states on the one hand that “[w]hile mandatory standardized ETC criteria would make the designation process easier, guidelines -- which cannot be binding -- only add to the complexity of the current state designation processes, without any countervailing benefits.”¹³⁶ On the other hand, Cox states that the Commission should refrain from adopting additional requirements for ETC designation.¹³⁷ Cox’ first point is valid: The guidelines need to be requirements in order for the benefits to flow to the fund and the customers who pay for the fund -- and benefit from it.

C. The Commission and the states can add conditions to the receipt of universal service support.

USCC presents an extensive and convoluted argument to support the proposition that “the Commission and the states are without authority to impose additional ETC eligibility requirements.”¹³⁸ Unfortunately, the argument does not prove the proposition.

USCC’s argument is a direct contradiction of the ruling of the Fifth Circuit Court of Appeals in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999)

¹³⁶ Cox at i.

¹³⁷ Id. at 4. Perhaps this is based on Cox’ view that “federal guidelines adopted by the Commission cannot be binding on the states....” (id. at 4-5), but does not support its view.

¹³⁸ USCC at 2. RCA/ARCC also make the same arguments as USCC. RCA/ARCC at 34-41.

(“*TOPUC*”), and is expressly dependent on USCC’s argument that the Fifth Circuit erred.¹³⁹

The Fifth Circuit held that

The first sentence [of 47 U.S.C. 241(e)(2)] requires state commissions to designate at least one common carrier as eligible, but that carrier must still meet the eligibility requirements in § 214(e)(1). The second sentence then confers discretion on the states to designate more than one carrier in rural areas, while requiring them to designate eligible carriers in non-rural areas consistent with the “public interest” requirement. Nothing in the statute, under this reading of the plain language, speaks at all to whether the FCC may prevent state commissions from imposing additional criteria on eligible carriers. Thus, the FCC erred in prohibiting the states from imposing additional eligibility requirements on carriers otherwise eligible to receive federal universal service support. The plain language of the statute speaks to the question of *how many* carriers a state commission may designate, but nothing in the subsection prohibits the states from imposing their own eligibility requirements. This reading makes sense in light of the states’ historical role in ensuring service quality standards for local service. Therefore, we reverse that portion of the Order prohibiting the states from imposing any additional requirements when designating carriers as eligible for federal universal service support.¹⁴⁰

USCC’s argument is that the Fifth Circuit improperly failed to accord the Commission “*Chevron* step-two” deference.¹⁴¹ *Chevron* step-two deference is due only where an interpretation of the statute is required.¹⁴² *TOPUC* found that an “interpretation” that gave the Commission the power to forbid additional conditions was not necessary, given the plain language of the statute, and that the assumption of this power was contrary to the statute.

¹³⁹ USCC at 6.

¹⁴⁰ *TOPUC*, 183 F.3d at 418 (emphasis in original).

¹⁴¹ USCC at 7.

¹⁴² *TOPUC*, 183 F.3d at 409.

Even the authorities cited by USCC in support undercut USCC's argument. USCC says that "[t]he Fifth Circuit has been correctly criticized for not affording the Commission *Chevron* step-two deference in TOPUC."¹⁴³ USCC cites *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001). What the Tenth Circuit actually said was:

The Fifth Circuit held that "the plain language of § 254(e) makes sufficiency of universal service support a direct statutory command." *TOPUC*, 183 F.3d at 412; see also *id.* at 425. This holding has been criticized (cogently, we think) for overstating the force of the word "should." See *Comsat Corp. v. FCC*, 250 F.3d 931, 940 (5th Cir. 2001) (Pogue, J., concurring).¹⁴⁴

USCC's argument, of course, depends on overstating the force of the word "shall" in its interpretation of the statute,¹⁴⁵ without considering the Fifth Circuit's plain meaning reading of the law. And despite USCC's statements to the contrary,¹⁴⁶ the Joint Board's interpretation of the statute is consistent with the plain language of the statute, as determined by the Fifth Circuit.¹⁴⁷

D. The standards adopted here should apply to ETCs that have already been designated.

The RD recommended that the Commission seek comment "on the applicability of the proposed designation guidelines to ETCs that have already been designated."¹⁴⁸ NASUCA stated that

¹⁴³ USCC at 7.

¹⁴⁴ *Qwest*, 258 F.3d at 1200.

¹⁴⁵ See USCC at 6.

¹⁴⁶ *Id.* at 10-11.

¹⁴⁷ USCC's various arguments about the *Virginia Cellular* decision (*id.* at 7-9) are misplaced here.

¹⁴⁸ RD, ¶ 45.

these guidelines, whether discretionary for the states or mandatory, must apply to all ETCs, not just those who seek certification after the guidelines are adopted. For example, if the guidelines require ETCs to demonstrate that they are able to provide service during an emergency, then all ETCs should have to make that demonstration. Early applicants for ETC status should not be able to evade these requirements and, more importantly, the customers of those ETCs should not be deprived of the security of those requirements. No carrier -- ILEC or CETC, wireless or wireline -- has an entitlement to high-cost funding such that it has standing to complain if the standards change and it loses funding.¹⁴⁹

USCC argues to the contrary, as does ALLTEL.¹⁵⁰ In effect, these parties argue in effect that once a carrier has been granted ETC status, that designation is valid forever.¹⁵¹

USCC concedes that state commission may have authority under state law to revoke an ETC designation.¹⁵² Yet USCC asserts that the Commission lacks the same authority under the Administrative Procedures Act (“APA”), “which limits the power of an administrative agency to impose sanctions for statutory violations.”¹⁵³

USCC fails to acknowledge the difference between “sanctions” for violations of a statute, upon which its arguments depend, and a finding that a carrier no longer qualifies for federal support because the carrier does not meet new standards for that support. Section 254(e) requires support to be spent only on services “for which the support is intended.” The absurdity of USCC’s position is its argument that “Congress expressly authorized sanctions for noncompliance with other requirements of § 254, but it

¹⁴⁹ NASUCA initial comments at 45 (footnote omitted).

¹⁵⁰ USCC at 20; ALLTEL at 6.

¹⁵¹ Centennial asserts that ETCs should be given “three to five years” to come into compliance with new rules, during which they would continue to receive support. Centennial at 11-12. A carrier that does not qualify as an ETC cannot be given high cost funding.

¹⁵² USCC at 20.

¹⁵³ Id.

authorized no sanction for noncompliance with § 254(e).¹⁵⁴ USCC does not point to these “expressly authorized sanctions.” The “sanction” for noncompliance with § 254(e) -- that is, no longer qualifying as an ETC -- is prospective cessation of funding.¹⁵⁵ Otherwise, § 254(e) has absolutely no meaning and is completely ineffectual.

USCC further states that “if the Commission or a state commission deprives a carrier of its valuable ETC designation without prior notice and the opportunity to be heard required by due process, that agency action could be challenged under wither the Fifth or Fourteenth Amendment.”¹⁵⁶ The instant rulemaking, as to which USCC has had notice and an opportunity to be heard, is due process for ETCs. And USCC, like all carriers, will have the opportunity to show that it meets any new standards for the receipt of federal high cost funds.

E. There should be a higher public interest standard in areas served by rural carriers.

1. Generally

Sprint asserts that “the statute does not require a special ‘public interest’ finding for areas served by *non-rural* ILECs separate and apart from the general finding that the applicant has satisfied the established ETC criteria.”¹⁵⁷ Yet the statute actually states as follows:

¹⁵⁴ Id. at 22.

¹⁵⁵ Key to USCC’s argument is its apparent view that the Commission could not revoke an ETC’s designation even if it were found to have expended federal funds improperly. See USCC at 22. The case cited by USCC -- *American Bus Ass’n v. Slater*, 231 F.3d 1, 6-7 (D.C. Cir. 2000) -- is wildly off point.

¹⁵⁶ Id.

¹⁵⁷ Sprint at 24 (emphasis in original).

Upon request *and consistent with the public interest, convenience and necessity*, the State commission may, in the case of an area served by an rural company, and shall, in all other areas, designate more than one common carrier as an eligible telecommunications carrier....¹⁵⁸

Thus the fundamental question in all ETC applications -- whether in rural territory or in non-rural territory -- is whether the designation is in the public interest. As to rural carriers, however, the statute requires a specific public interest finding. That fact alone requires a higher standard for designation of ETCs in rural carriers' territories.

2. A per-line support public interest test should be adopted.

AT&T supports the use of cost benchmarks for determining when support in an exchange is in the public interest, but does not propose any.¹⁵⁹ CSTA/TRC also supports the use of a per-line support test, and mentions, but does not support the specific \$20 and \$30 benchmarks set forth by Joint Board member Billy Jack Gregg,¹⁶⁰ which NASUCA supports. CSTA/TRC give, however, an example of an exchange where all of at least two carriers are supported under the current mechanism, at well over \$50 per line per month.¹⁶¹

CT would take the proposed benchmarks and extend them, such that between \$20 and \$10 per month support -- where Mr. Gregg's rule would allow multiple ETCs -- CenturyTel would allow only two ETCs in addition to the ILEC.¹⁶² Where support is less than \$10 per month, CenturyTel would allow more ETCs, but does not specify how many

¹⁵⁸ 47 U.S.C. § 214(e)(2) (emphasis added).

¹⁵⁹ AT&T at 26.

¹⁶⁰ CSTA/TRC at 19-20.

¹⁶¹ Id. at 19.

¹⁶² CenturyTel at 18.

more. The \$20 and \$30 benchmarks have relation to the actual fund;¹⁶³ CenturyTel provides no rationale for a \$10 benchmark.

The AkRC opposes the single line restriction because it will reduce support for the incumbent.¹⁶⁴ Table 1 attached to the AkRC's comments demonstrates how, even in Alaska, under the public interest test multiple ETCs would be found.¹⁶⁵ Table 1 shows that there are 19 incumbent carriers that receive less than \$20 per month per line in support. In their territories, multiple CETCs would be allowed. There are three incumbents that receive more than \$20 but less than \$30 in support, where one additional ETC would be allowed. And there are only two ILECs that receive more than \$30 in support, where the ILEC would be the only ETC. One of those ILECs, however, receives \$118 per month per line in support. The fund should not be required to support competitive service in an area with such high costs.

GCI asserts that "regulators have little chance of accurately predicting which markets will actually sustain multiple ETCs over time and which will not."¹⁶⁶ The issue here is **not** which markets will sustain multiple ETCs; instead the issue is whether customers in other parts of the nation should be required to pay exorbitant amounts in order to support competition in such high cost markets.

F. The annual ETC designation process should be used to ensure that federal support is used for the purposes required by § 254.

In their comments, SDTA/Townes propose that

¹⁶³ See NASUCA initial comments at 39.

¹⁶⁴ AkRC at 3.

¹⁶⁵ The table does not list the ILECs' (or the CETCs') rates, so that whether the resultant rates are affordable or reasonably comparable to urban rates is left to the imagination.

¹⁶⁶ GCI at

the annual state certification should contain the following information for each CETC for which support is requested:

1. The annual amount of federal universal service support received by the CETC for each ILEC service area in which it receives support
2. Detailed information on the annual investments made in each of the ILEC's service areas.
3. If the federal universal service support received by the CETC exceeds the investment made in the ILEC's service area, an explanation of how the remaining support, an explanation of how the remaining support was used to provide, maintain, and upgrade facilities and services for which the support was intended, as required by the Act.¹⁶⁷

MSCC says that "part of any reforms in this proceeding should include the ratcheting up of oversight and auditing of competitive ETCs."¹⁶⁸ NASUCA agrees, but submits that the same oversight and auditing that are extended to CETCs should also -- for the protection of the fund -- apply to the ILECs.

¹⁶⁷ SDTA/Townes at 9-10.

¹⁶⁸ MSCC at 13.

IV. THE CHANGES ADDRESSED HERE SHOULD NOT BE CONTINGENT ON OTHER CHANGES TO THE UNIVERSAL SERVICE PROGRAMS. THE COMMISSION NEED NOT ADDRESS “SOURCE OF SUPPORT” ISSUES IN THIS PORTION OF THIS PROCEEDING.

SBC says that restricting support to a single line per customer should be undertaken “only as part of more comprehensive universal service reform.”¹⁶⁹ NASUCA agrees that comprehensive universal service reform is needed, yet submits that removing support from multiple lines per customer should not wait on any other specific action other than those specifically related to this issue. The Commission is, in fact, working on many other aspects of the reform:

For example, CTIA questions whether ILECs’ support should be based on embedded cost.¹⁷⁰ On the other hand, NTCA comments that CETC support should be based on the CETC’s cost, rather than the ILEC’s.¹⁷¹ Both of these issues are key subjects of the Commission-requested August 16, 2004 Joint Board request for comment.¹⁷²

NASUCA agrees with NCTA that there is an urgent need to assess a broader base of revenues to support universal service.¹⁷³ That is also one of the hot topics in this docket.

¹⁶⁹ SBC at 9.

¹⁷⁰ CTIA at 23.

¹⁷¹ NTCA at 13-14; see also SDTA at 2-4; RTA at 5-7. RTA’s proposals to base CETC support on the ratio of CETC investment to RLEC investment (id. at 8-11) and to allow higher-cost CETCs to submit cost studies (id. at 12-14) are also appropriately raised in response to the Joint Board’s request for comment.

¹⁷² FCC 04J-2, ¶¶ 20-26, 35-37.

¹⁷³ NCTA at 24-25.

NASUCA could not disagree more with SBC, however, about the specific measures that need to be undertaken here. SBC says that the Commission should not act “without taking steps to assure that all carriers serving high cost areas have flexibility to reform their rate structures to fully recover the costs of providing non-essential, non-primary connections and services; failure to do so would be confiscatory.”¹⁷⁴ SBC’s notion that this Commission is required to do intrastate ratemaking is, of course, not worthy of consideration.

Telscape’s comments are limited to two non-germane points having to do with carriers that want ETC status only to serve low-income consumers and to receive Lifeline funding. This issue need not be addressed here, especially because, via Public Notice dated August 30, 2004, the Wireline Competition Bureau put this specific issue out for public comment.¹⁷⁵

The Commission can and should decide on supporting only single lines and on raising the bar on ETC designation without addressing these other issues first. The other issues can be resolved in the other active contexts discussed here.

V. CONCLUSION

As predicted in NASUCA’s initial comments, proponents of supporting all lines of all ETCs have claimed that such support is necessary for:

- Supporting entire networks
- Upgrading and building out new networks

¹⁷⁴ SBC at 9.

¹⁷⁵ NASUCA did support examination of this issue. Just not pertinent to RD.

- Supporting advanced services
- Promoting mobility
- Funding competitive entry
- Funding new investment opportunities
- Maintaining revenue streams (or ensuring total cost recovery) for small telephone companies

Although these bullets may describe secondary benefits of universal service support, none of these issues touches on the real purpose for the federal universal service funds: providing basic access to all Americans, with rates in rural areas that are reasonably comparable to those in urban areas. That purpose is accomplished by providing high-cost support to a single line per customer.

MSCC capsulizes the inherent contradiction in much of the carriers' support for supporting all lines, stating, "Section 254 seeks to promote access to information and advanced services, **even though those services are not 'supported' services under FCC rules.**"¹⁷⁶ Support is support, and promotion is promotion, and the two are not identical.

USTA describes a system where support goes only to supported services in apocalyptic terms:

The impact of supporting only single connections or primary lines will be drastic and severe. Carriers that lose support as they lose lines -- both incumbent ETCs and new ETCs -- will no longer be able to maintain their networks, much less expand or improve them. This spiral downwards will most likely lead to such carriers going out of business, or at best severely limiting their service, leaving no carrier in some areas, not even the new ETCs, to provide service in America's high-cost areas. The consequences of providing universal service support based on a single connection or

¹⁷⁶ MSCC at 27 (emphasis added).

primary line could be devastating to rural America and other high-cost areas of America.¹⁷⁷

The public debate is not helped by such hyperbole.¹⁷⁸ And the only apparent cure for such devastation will be allowing the high cost fund to grow by **two billion dollars** as it supports multiple line of multiple carriers for each customer. This is not required by the statute.

The statutory purpose is also accomplished by raising the standards for qualification as an ETC. Certainly, merely providing competition for the ILECs' services does not sufficiently enhance the public interest so as to justify granting federal funding to a CETC. Perhaps the most wrong-headed expression of the ETCs' view is USCC's argument that "[t]he Courts have recognized that without access to high-cost support, a competitive carrier in rural areas has no hope of providing a service that competes in the local exchange marketplace in most rural areas."¹⁷⁹ USCC cites the Supreme Court's decision in *Verizon*,¹⁸⁰ which dealt with unbundling obligations and TELRIC rates, and did not address universal service support at all.

Providing support for a single line per customer and adopting higher ETC standards both have as their key not spending federal USF dollars -- which are actually *consumers'* funds -- for purposes outside the statute. The Commission should adopt NASUCA's recommendations.

¹⁷⁷ USTA at 18-19.

¹⁷⁸ See also Dobson at 18, equating a policy of supporting only primary lines to the policies of the "Soviet Union and twentieth-century China."

¹⁷⁹ USCC at 24.

¹⁸⁰ *Id.*, n. 127, citing *Verizon Communications, Inc. v. FCC*, 122 S.Ct. 1646 (2002).

Respectfully submitted,

David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications
Committee

bergmann@occ.state.oh.us

Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

High Cost Model Line Count (HCM)
Sample Letter

Date:

CETC Name:

CETC Study Area Code (SAC):

Contact Name:

Contact Telephone Number:

Lines Reported As Of:

Areas are Eligible for Support/Ineligible for Support (select one):

[illegible]

**High Cost Loop, Local Switching Support and Long Term Support
Line Count - Sample Letter**

Date:

CETC Name:
CETC Study Area Code
(SAC):

Contact Name:
Contact Telephone Number:
Lines Reported As Of:

Areas are Eligible for Support/Ineligible for Support (select one):

Incumbent Carrier Name	Incumbent Carrier SAC	Incumbent Disaggregation Path Selection (1,2 or 3)	Disaggregation Zone Name (if Applicable)	Primary Residence and Single Line Business Lines	Total Number of Lines in Service